



City of Omaha  
Jim Suttle, Mayor

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**Paul D. Kratz**  
City Attorney

Honorable President

and Members of the City Council,

Attached please find an Ordinance which was prepared at the request of Councilmember Ben Gray. This Ordinance adds sexual orientation and gender identity as additional protected categories under the City of Omaha's prohibitions against discriminatory practices. In addition, the Ordinance provides an exemption for religious organizations from these new requirements. The Ordinance also amends the Equal Employment Opportunity clause which is required to be inserted in City contracts to include these protected categories.

Should you have any questions or wish to discuss this further, please do not hesitate to contact me.

Respectfully submitted,

Bernard J. in den Bosch  
Assistant City Attorney

2/21/12  
Date

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE to amend 13-82, 13-84, 13-85, 13-89, 13-90, 13-91, 13-92, 13-93, 13-94, 13-95, 13-97 and 10-192 of the Omaha Municipal Code to add prohibitions for discrimination on the basis of sexual orientation, and gender identity within the City of Omaha and in City of Omaha contracts; and to provide the effective date hereof.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF OMAHA:

Section 1. That section 13-82 of the Omaha Municipal Code is hereby amended as follows:

**Sec. 13-82. General definitions.**

For the purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them:

(a) *Age*: Forty through 70 years of age inclusive for employment purposes and all ages 40 and above on all matters; provided, however, that the definition of "age" as contained in this section shall not apply to the mandatory retirement age for uniformed personnel of the police and fire departments as established by section 23-309.

(b) *Charge*: A written statement under oath or affirmation which alleges an unlawful practice and which is filed with the director.

(c) *Charge filed with the director*: A charge which is received and accepted by the director for further action.

(d) *Charging party*: The individual making a charge alleging an unlawful practice, or the director.

(e) *Director*: The human rights and relations director or a designate.

(f) *Discrimination*: Any act or failure to act, whether by itself or as a part of a practice, the effect of which is to differentiate between or among individuals or groups of individuals by reason of race, color, creed, religion, sex, marital status, sexual orientation, gender identity, national origin, age or disability.

(g) *Disability*: The physical or mental condition of an individual who:

1 (1) Has a physical or mental impairment which substantially limits one or more  
2 major life activities;

3  
4 (2) Has a record of such impairment; or

5  
6 (3) Is regarded as having such impairment.  
7

8 (h) Gender identity: Means the actual or perceived appearance, expression, identity or  
9 behavior of a person as being male or female, whether or not that appearance, expression,  
10 identity or behavior is different from that traditionally associated with the person's  
11 designated sex at birth.

12  
13 (i) *Hearing board*: The civil rights hearing board created by this article.

14  
15 (j) *Individual*: Includes individuals.

16  
17 (k) *Marital status*: The state of being married, single, divorced, separated or widowed or  
18 the changing of such state.

19  
20 (l) *National origin*: Ancestry, lineage, name, place of birth or any factor indicative of any  
21 of these; includes the national origin of an ancestor.

22  
23 (m) *Person*: Any individual, association, committee, corporation, joint apprenticeship  
24 committee, joint-stock company, labor organization, legal representative, mutual company,  
25 partnership, receiver, trust, trustee, trustee in bankruptcy, unincorporated organization, and  
26 any other legal or commercial entity, the city or any governmental entity or agency, excluding  
27 the United States of America and the State of Nebraska, or any agent or representative of any  
28 of the foregoing.

29  
30 (n) *Religious organization*: A bona fide religious corporation, association, institution or  
31 society which does not limit or exclude or discriminate against individuals on the basis of  
32 race, color, national origin, sex or disability.

33  
34 (o) *Respondent*: Any person against whom a charge has been filed.

35  
36 (p) *Sex*: The state of being either male or female.

37  
38 (q) Sexual Orientation: Actual or perceived heterosexuality, homosexuality, or bisexuality.

39 (r) *Unlawful practice*: A practice or act within the city which is designated as  
40 discriminatory under the terms of this article.

Section 2. That section 13-84 of the Omaha Municipal Code is hereby amended as follows:

**Sec. 13-84. Unlawful practices.**

It is an unlawful practice for any person, wholly or partially because of race, color, creed, religion, sex, marital status, sexual orientation, gender identity, national origin, age or disability, to do any of the following:

(a) To deny an individual a full and equal enjoyment of any place of public accommodation;

(b) To discriminate against or segregate any individual in a place of public accommodation;

(c) Directly or indirectly to refuse, withhold from or deny to any individual the accommodations, advantages, facilities, services or privileges of a place of public accommodation;

(d) To attempt to refuse, withhold from or deny to any individual, directly or indirectly, the accommodations, advantages, facilities, services or privileges of a place of public accommodation; or

(e) To print, circulate, post, or mail or otherwise cause to be published a statement, advertisement, or sign which indicates that the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation will be refused, withheld from, or denied an individual because of race, color, creed, religion, sex, marital status, sexual orientation, gender identity, national origin, age, or disability, or that an individual's patronage of or presence at a place of public accommodation is objectionable, unwelcome, unacceptable, or undesirable, because of race, color, creed, religion, sex, marital status, sexual orientation, gender identity, national origin, age or disability.

Section 3. That section 13-85 of the Omaha Municipal Code is hereby amended as follows:

**Sec. 13-85. Authorized exceptions—Religious preference.**

It is not an unlawful practice for any place of public accommodation owned by or operated on behalf of a religious organization to give preference in the use of such place to members of the same faith as that of the administering body. If a place of public accommodation owned by or operated on behalf of a religious organization is made available for use only to members of the

1 same faith as that of the administering body, the provisions concerning discriminatory practices  
2 that relate to sexual orientation and gender identity shall not apply.  
3

4 Section 4. That section 13-89 of the Omaha Municipal Code is hereby amended as follows:

5 **Sec. 13-89. Unlawful practices--Employers.**  
6

7 It is an unlawful practice for an employer, wholly or partially because of race, color, creed,  
8 religion, sex, marital status, sexual orientation, gender identity, national origin, age, or disability, to  
9 do any of the following:

10  
11 (a) To fail or refuse to hire an individual;

12  
13 (b) To discharge an individual;

14  
15 (c) To discriminate against an individual with respect to compensation, benefits, or  
16 the terms, conditions or privileges of employment; provided, however, that this  
17 section shall not be interpreted to require an employer provide employment benefits  
18 to same sex partners; or  
19

20 (d) To limit, segregate or classify an employee or any prospective employee in a  
21 way which would deprive or tend to deprive an individual of employment  
22 opportunities or otherwise adversely affect an individual's employment status.  
23

24 Section 5. That section 13-90 of the Omaha Municipal Code is hereby amended as follows:

25 **Sec. 13-90. Same--Employment agencies.**  
26

27 It is an unlawful practice for an employment agency, wholly or partially because of race,  
28 color, creed, religion, sex, marital status, sexual orientation, gender identity, national origin, age or  
29 disability, to do any of the following:

30  
31 (a) To fail or refuse to refer an individual for employment;

32  
33 (b) To fail to list or properly classify an individual for employment; or

34 (c) To comply with a request from an employer for referral of applicants for  
35 employment if the request indicates either directly or indirectly that the employer  
36 discriminates in employment.  
37

Section 6. That section 13-91 of the Omaha Municipal Code is hereby amended as follows:

**Sec. 13-91. Same--Labor organizations.**

It is an unlawful practice for a labor organization, wholly or partially because of race, color, creed, religion, sex, marital status, sexual orientation, gender identity, national origin, age or disability, to do any of the following:

(a) To exclude or to expel from membership, or otherwise to discriminate against, a member or prospective member;

(b) To limit, segregate or classify its membership or prospective membership, or to classify or to fail or refuse to refer for employment an individual in a way:

(1) Which would deprive or tend to deprive an individual of employment opportunities; or

(2) Which would limit employment opportunities or otherwise adversely affect the status of an employee or of a prospective employee;

(c) To cause or attempt to cause an employer, or to cooperate with an employer, to violate any of the provisions of section 13-89; or

(d) To fail or refuse to represent a person in a dispute with respect to compensation, benefits or other terms, conditions or privileges of employment.

Section 7. That section 13-92 of the Omaha Municipal Code is hereby amended as follows:

**Sec. 13-92. Same--Training programs.**

It is an unlawful practice for an employer, labor organization or joint labor-management committee controlling apprenticeship, on-the-job training or other training or retraining program, wholly or partially because of race, color, creed, religion, sex, sexual orientation, gender identity, marital status, national origin, age or disability, to discriminate against an individual in admission to, or employment in, a program established to provide apprenticeship or other training.

Section 8. That section 13-93 of the Omaha Municipal Code is hereby amended as follows:

**Sec. 13-93. Same--Advertisements.**

1 It is an unlawful practice for any person to print, publish, circulate or display or cause to be  
2 published, printed, circulated or displayed any advertisement, notice or statement relating to  
3 employment, employment opportunities, job openings, union membership, apprentice programs, job-  
4 training programs, or any of the terms, conditions or privileges thereof, the language of which  
5 advertisement, notice or statement expresses any limitation, specification, discrimination or  
6 preference as to race, color, creed, religion, sex, marital status, sexual orientation, gender identity,  
7 national origin, age or disability. A limitation, specification, discrimination or preference as to  
8 religion, national origin, sex, age or marital status is not a violation where religion, national origin,  
9 sex, age or marital status is a bona fide occupational qualification for the particular job advertised.

10  
11 Section 9. That section 13-94 of the Omaha Municipal Code is hereby amended as follows:

12 **Sec. 13-94. Same--Applications.**

13  
14 It is an unlawful practice for an employer, labor organization, employment agency or joint  
15 labor-management training committee to make or use a written or oral inquiry or form of application  
16 that expresses or implies a preference, limitation or specification based on race, color, creed,  
17 religion, sex, marital status, sexual orientation, gender identity, national origin, age or disability,  
18 where the employer, employment agency, labor organization or joint labor-management training  
19 committee cannot show that religion, national origin, sex, age or marital status is a bona fide  
20 occupational qualification for the particular job.

21  
22  
23 Section 10. That section 13-95 of the Omaha Municipal Code is hereby amended as follows:

24 **Sec. 13-95. Authorized exceptions--Employers.**

25  
26 It is not an unlawful practice for an employer to do any of the following:

27  
28 (a) To fail or refuse to hire an individual or to discharge an individual on the basis  
29 of disability if:

30  
31 (1) The disability actually prevents the disabled individual from performing  
32 the essential functions of the job in question; and

33  
34 (2) There is no reasonable accommodation that the employer can make with  
35 regard to the disability;

36 (b) To fail or refuse to hire an individual on the basis of national origin, sex, marital  
37 status or age in those certain instances where national origin, sex, marital status or  
38 age is a bona fide occupational qualification for the particular job;

(c) To apply different standards of compensation or different terms, conditions or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production, or to employees who work in different locations, provided that such differences do not discriminate because of race, color, creed, religion, sex, marital status, sexual orientation, gender identity, national origin, age or disability;

(d) To refuse an individual employment based on a policy of not employing both husband and wife if such policy is equally applied to both sexes;

(e) To adopt a voluntary affirmative action plan designed to aid in the elimination of patterns of exclusion, segregation or discrimination based on race, color, creed, religion, sex, marital status, sexual orientation, gender identity, national origin, age or disability.

Section 11. That section 13-97 of the Omaha Municipal Code is hereby amended as follows:

**Sec. 13-97. Same—Other.**

It is not an unlawful practice for:

(a) A religious organization to employ an individual on the basis of the individual's religion to perform work connected with the carrying on by such religious organization of its religious activity Furthermore, the provisions in this Chapter relating to unlawful practices based on sexual orientation and gender identity do not apply to any religious organization with respect to its employment of individuals to perform work connected with the carrying on by such religious organization of its religious activity.

(b) A school, college, university or other educational institution to hire and employ employees of a particular religion if the school, college, university or other educational institution is, in whole or substantial part, owned, supported, controlled or managed by a particular religion or by a particular religious organization and if the curriculum of the school, college, university or other education institution is directed toward the propagation of a particular religion and the choice of employees is necessary to promote the religious principles for which it is established or maintained. Furthermore, the provisions in this Chapter relating to unlawful practices based on sexual orientation and gender identity do not apply to any school, college, university or other educational institution if that school, college, university or other educational institution is, in whole or substantial part, owned, supported,



controlled or managed by a particular religion or by a particular religious institution and if the curriculum of the school, college, university or other education institution is directed toward the propagation of a particular religion and the choice of employees is necessary to promote the religious principles for which it is established or maintained.

(c) A labor organization to classify its membership or to classify or refer for employment an individual or for a labor organization or joint labor-management committee controlling apprenticeship or other training or retraining program to admit or employ an individual in any such program on the basis of religion, national origin, sex, age or marital status in those certain instances where religion, national origin, sex, age or marital status is a bona fide occupational qualification for the particular job.

(d) A labor organization or a joint labor-management committee to adopt a voluntary affirmative action plan designed to aid in the elimination of patterns of exclusion, segregation or discrimination based on race, color, creed, religion, sex, marital status, national origin, age or disability.

Section 12. That section 10-192 of the Omaha Municipal Code is hereby amended as

follows:

**Sec. 10-192. Equal employment opportunity clause.**

All contracts hereafter entered into by the city shall incorporate an equal employment opportunity clause, which shall read as follows:

During the performance of this contract, the contractor agrees as follows:

(1) The contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, sexual orientation, gender identity, disability or national origin. The contractor shall ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, sex, sexual orientation, gender identity, or national origin. As used herein, the word "treated" shall mean and include, without limitation, the following: recruited, whether by advertising or by other means; compensated; selected for training, including apprenticeship; promoted; upgraded; demoted; downgraded; transferred; laid off; and terminated. The contractor agrees to and shall post in conspicuous places, available to employees and applicants for employment,

1 notices to be provided by the contracting officers setting forth the provisions of this  
2 nondiscrimination clause.

3 (2) The contractor shall, in all solicitations or advertisements for employees placed  
4 by or on behalf of the contractor, state that all qualified applicants will receive  
5 consideration for employment without regard to race, religion, color, sex, sexual  
6 orientation, gender identity, or national origin, age, disability.

7  
8 (3) The contractor shall send to each representative of workers with which he has a  
9 collective bargaining agreement or other contract or understanding a notice advising  
10 the labor union or workers' representative of the contractor's commitments under the  
11 equal employment opportunity clause of the city and shall post copies of the notice in  
12 conspicuous places available to employees and applicants for employment.

13  
14 (4) The contractor shall furnish to the human rights and relations director all federal  
15 forms containing the information and reports required by the federal government for  
16 federal contracts under federal rules and regulations, including the information  
17 required by sections 10-192 to 10-194, inclusive, and shall permit reasonable access  
18 to his records. Records accessible to the human rights and relations director shall be  
19 those which are related to paragraphs (1) through (7) of this subsection and only after  
20 reasonable notice is given the contractor. The purpose of this provision is to provide  
21 for investigation to ascertain compliance with the program provided for herein.

22  
23 (5) The contractor shall take such actions with respect to any subcontractor as the  
24 city may direct as a means of enforcing the provisions of paragraphs (1) through (7)  
25 herein, including penalties and sanctions for noncompliance; however, in the event  
26 the contractor becomes involved in or is threatened with litigation as the result of  
27 such directions by the city, the city will enter into such litigation as is necessary to  
28 protect the interests of the city and to effectuate the provisions of this division; and,  
29 in the case of contracts receiving federal assistance, the contractor or the city may  
30 request the United States to enter into such litigation to protect the interests of the  
31 United States.

32  
33 (6) The contractor shall file and shall cause his subcontractors, if any, to file  
34 compliance reports with the contractor in the same form and to the same extent as  
35 required by the federal government for federal contracts under federal rules and  
36 regulations. Such compliance reports shall be filed with the human rights and  
37 relations director. Compliance reports filed at such times as directed shall contain  
38 information as to the employment practices, policies, programs and statistics of the  
39 contractor and his subcontractors.

1 (7) The contractor shall include the provisions of paragraphs (1) through (7) of this  
2 section, "Equal employment opportunity clause," and section 10-193 in every  
3 subcontract or purchase order so that such provisions will be binding upon each  
4 subcontractor or vendor.  
5

6 Section 13. This Ordinance shall be in full force and take effect fifteen (15) days from and  
7 after its passage.

INTRODUCED BY COUNCILMEMBER

APPROVED BY:

\_\_\_\_\_  
MAYOR OF THE CITY OF OMAHA DATE

PASSED \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
CITY CLERK OF THE CITY OF OMAHA DATE

APPROVED AS TO FORM:

 2/21/12  
\_\_\_\_\_  
ASSISTANT CITY ATTORNEY DATE